

REMARKS/ARGUMENTS

In the restriction requirement dated August 1, 2007, the Examiner delineated the following inventions as being patentably distinct.

Group I: Claims 1-6 drawn to a two-pack type plastisol composition.

Group II: Claims 7-13, drawn to a method of using the plastisol composition.

Applicants provisionally elect with traverse, the invention of Group I (Claims 1-6) drawn to a two-pack type plastisol composition.

The claims of Groups I and II are integrally linked as compounds (composition) and method of use.

Restriction is only proper if the claims of the restricted groups are independent or patentably distinct and there would be a serious burden placed on the Examiner if restriction is not required (M.P.E.P. §803). The burden of proof is on the Examiner to provide reasons and/or examples to support any conclusions that the claims of the restricted groups are patentably distinct.

The claims of Groups I and II are related as product and method of using said product, and as such, are considered to be interdependent and should be examined together on the merits especially wherein the sole disclosed utility of the product is that recited in the specification. There is a technical relationship that involves the same feature, and it is this technical feature that defines the contribution which each of the Groups taken as a whole makes over the prior art.

The Office has failed to consider that there is indeed a common significance that is shared by all the claims, and that is the two-pack plastisol composition and its use thereof. The Examiner has failed to supply any references or examples to support the allegation that other methods can be used to make the final product.

Final product and method of making and using said product are interdependent and should be examined together on the merits especially wherein the sole disclosed utility of the two-pack type plastisol composition is that recited in the specification.

Different classification of subject matter to be divided is not conclusive proof of independent status and divisibility. Unity of invention has to be considered in the first place only in relation to the independent claim. A dependent claim is one which contains all the features of another claim and is in the same category of claims as the other claims. It does not matter if a dependent claim itself contains a further invention.

Further, the M.P.E.P. §803 states as follows:

If the search and examination of an entire application can be made without a serious burden, the Examiner must examine it on the merits, even though it includes claims to distinct and independent inventions.

Applicants submit that a search of all the claims would not constitute a serious burden on the Office. In fact, the international Search Authority has searched all of the claims together. As the Office has not shown any evidence that a restriction should now be required when the International Preliminary Report did not, the restriction is believed to be improper. 37 C.F.R. §1.475(b) provides in relevant part that “a national stage application containing claims to different categories of invention will be considered to have unity of invention if the claims are drawn to products, manufacture of said product, and the use of said product. The determination of whether a group of inventions is so linked as to form a single general inventive concept should be made without regard to whether the inventions are claimed as separate claims or as alternative within a single claim. In fact the International Search Authority has searched all of the claims together.

For the reasons set forth above, Applicants request that the Restriction Requirement be withdrawn.

Applicants further request that if the invention of Group I is found allowable,
withdrawn Group II which includes all the limitations of the allowable claims be rejoined.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.
Norman F. Oblon



Paul J. Killos
Registration No. 58,014

Customer Number
22850

Tel: (703) 413-3000
Fax: (703) 413 -2220
(OSMMN 08/07)